

March 8, 2001

Honorable Norman K. Ferguson, Senate Chair  
Honorable William R. Savage, House Chair  
Joint Standing Committee on Utilities & Energy  
115 State House Station  
Augusta, ME 04333

Re: LD 662, An Act to Remove Barriers to Providing Natural Gas Services

Dear Senator Ferguson and Representative Savage:

The Commission will testify in support of LD 662, An Act to Remove Barriers to Providing Natural Gas Services. The Commission will be present at the work session and will be pleased to work with the Committee as it considers this bill.

Subsections 2101 through 2105 of Title 35-A set forth procedures a utility must follow before serving customers. A gas utility must receive authorization from the Commission before it can serve a municipality. We must grant that authorization for each municipality the utility serves. Before granting authorization, we examine the technical and financial capability of the utility and its ability to provide safe, reliable service at reasonable rates. The law requires additional procedures if the utility is a *second utility* to serve a municipality – i.e., if another utility is already authorized to serve the municipality. We cannot authorize a second utility to serve a municipality unless we find that “public convenience and necessity require” the second utility’s service.

LD 662 would eliminate the need for a gas utility to receive Commission approval to expand its service into a municipality if two conditions are met. First, the utility must already have authorization to serve, and actually be serving, somewhere in the State. Second, the expansion must be a “greenfield” situation, i.e., no gas utility can be *providing* similar service in the municipality. Authorization would still be required before a utility could expand into a municipality in which another utility already served customers.

Maine is in an unusual situation regarding gas utilities because only a small portion of the state receives gas service. One well-established and two newly-established gas utilities are expanding service into the remaining greenfield areas. We have chosen to encourage this expansion by allowing competition between utilities and by eliminating barriers to expansion. We have authorized two or more gas utilities to

serve one municipality in instances when no utility is providing service, because this approach will foster competition among gas utilities and result in the lowest cost gas service. We intend to continue this practice. Therefore, as a practical matter, the bill would create a final outcome that is consistent with our current practices.

The approval process takes time and resources. Once a utility has undergone the scrutiny required by our authorization process, it is an unnecessary safeguard to repeat that process. The bill maintains the safeguard against duplicate or unnecessary facilities by requiring Commission authorization before a utility can expand into a municipality that already receives gas service.

The bill uses the term “similar service” when determining whether authorization is necessary. Because of this term, a utility can expand into a municipality that already receives gas service, if that service is not “similar” to the service offered by the expanding utility. The interpretation of “similar service” may cause disputes in some situations. A utility can bring such a dispute to the Commission for resolution.

Finally, the bill as written is ambiguous and creates a conflict among subsections. We recommend amendments that would eliminate these problems. First, to clarify the bill’s intent, § 2104(2) in the bill should be amended to read:

Notwithstanding any other provision of this chapter, a gas utility authorized to furnish service and serving customers within the state is not required to obtain the approval of the commission to serve in any municipality in which no other gas utility is furnishing similar service.

Second, to eliminate an inconsistency that section 2 of the bill would create between §§ 2102 and 2105, we recommend amendments that would confine §2104 to gas utilities, §2105 to all other utilities, and would add the substance of §2105 to §2104 but limit it to gas utilities. Our recommended amendments are:

1. Instead of the revisions included in the bill, §2105(1) should be amended as follows:

**Approval only after hearing.** Except as provided in subsection 2, no approval required by section 2102, ~~or 2103~~ ~~or 2104~~ and no license, permit or franchise may be granted to any person to operate, manage or control a public utility named in section 2101 in a municipality where there is in operation a public utility engaged in similar service or authorized to provide similar service, until the commission has made a declaration, after public hearing of all parties interested, that public convenience and necessity require a 2nd public utility.

2. The following subsection should be added as §2104(3):

**Approval only after hearing.** Except as provided in subsection 4, no approval required by subsection 1 and no license, permit or franchise may be granted to any person to operate, manage or control a gas utility in a municipality where there is in operation a public utility engaged in similar service until the commission has made a declaration, after public hearing of all parties interested, that public convenience and necessity require a 2nd public utility.

3. The following subsection should be added as § 2104(4):

**Declaration without hearing.** The commission may make a declaration without public hearing if it appears that the utility providing service the utility seeking approval from the commission to provide service and any customer or customers to receive service agree that the utility seeking approval to serve should provide service.

Because this bill eliminates an unnecessary administrative step without eliminating safeguards to gas expansion in the State, we urge the Committee to vote out LD 662 as “ought to pass as amended.” If you have any questions regarding this matter please contact me.

Sincerely,

Marjorie R. McLaughlin  
Legislative Liaison